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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/599,405	06/22/2000	ROMAN VITENBERG	106544	7727
24505	7590	03/04/2004	EXAMINER	
DANIEL J SWIRSKY PO BOX 2345 BEIT SHEMESH, 99544 ISRAEL			BAYARD, EMMANUEL	
ART UNIT		PAPER NUMBER		
2631				11
DATE MAILED: 03/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/599,405	VITENBERG, ROMAN
	Examiner	Art Unit
	Emmanuel Bayard	2631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 March 2003.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 26-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 26-45 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 36 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 36 recites the limitation "said control signal" in line 1. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 42 recites the limitation "said second transmitting" in line 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 26-33 and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al U.S. Patent NO 6,456,650 B1 in view of Olshansky et al U.S. Patent No 6,633,572 B1.

buffer 120 has sufficient space to receive additional data packets as taught by Olshansky (see col.5, lines 25-30).

*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Staples et al U.S. patent No 6,295,357 B1 teaches a system and method for ringing other subscriber.

McHale et al U.S. Patent No 6,282,273 B1 teaches a communication server.

Gibbs et al U.S. Patent No 6,278,706 B1 teaches a wireless packet data communication.

Maxwell et al U.S. Patent No 6,466,584 B1 teaches a system and method for performing digital subscriber line.

Ibraim et al U.S. patent No 6,563,864 B1 teaches a residential power cutback.

Gang et al U.S. patent No 4,639,921 teaches a method and an apparatus for early bit collision.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel Bayard whose telephone number is 703 308-9573.

The examiner can normally be reached on Monday-Friday (7:Am-4:30PM) Alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammed Ghayour can be reached on 703 306-3034. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

As per claims 26, 39 and 43, Cheng et al discloses a network DSL (NDSL) modem for communicating on an xDSL telephone line, the NDSL modem comprising: a network modem to communicate along an upstream frequency (see col.3, lines 34-37 and col.4, lines 7-67) band of said ADSL, VDSL, HDSL is considered as the claimed (xDSL line) (see col.3, lines 40-41) with at least one other NDSL modem connected in a subscriber premises to said xDSL telephone line (see figs. 1-2); and a control tone transmitter t (see abstract see fig.3 element 120 and col.2, lines 52-57 and col.5, lines 40-47 and col.6, lines 38-42) to transmit signal to a central office modem in a central office (CO) (see figs. 1-2 element 40) of a communication system is not receptive.

However Cheng et al does not teach transmit a control signal to which a central office modem in a central office (CO) of a communication system is not receptive for signaling said at least one other NDSL modem to be ready to receive data packets.

Olshansky et al teaches transmit a control signal (see fig.3 element 130) to which a central office modem in a central office (CO) (see fig.1 element 10) of a communication system is not receptive for signaling said at least one other NDSL modem to be ready to receive data packets (see col.4, lines 40-67 and col.5, lines 2-67).

It would have been obvious to one of ordinary skill in the art to implement the teaching of Olshansky et al into Cheng so that jamming signal is transmitted continuously so as to prevent transmission from other Ethernet nodes, until the EA buffer 120 has sufficient space to receive additional data packets as taught by Olshansky (see col.5, lines 25-30).

As per claims 27, 40 and 44, the modem Cheng in combination with Olshansky would include wherein said control signal is at a frequency not used for communication between said

NDSL modem and said central office modem as to prevent loss of data packets as a result of overloading Ethernet buffer.

As per claims 28 and 42, the modem Cheng does include said network modem comprises an upstream frequency band transmitter and an upstream frequency band receiver (see abstract and col.4, lines 7-17).

As per claim 29, 41 and 45, the modem Cheng in combination with Olshansky would include said transmitter and receiver perform time division multiplexing (TDM) so as to prevent transmission from other Ethernet nodes, until the EA buffer 120 has sufficient space to receive additional data packets as taught by Olshansky (see col.5, lines 25-30).

As per claim 30, the modem Cheng does include comprising an RF transceiver (see col.2, line 22) for control of a home device.

As per claim 31, the modem Cheng does include comprising a DSL modem to communicate with said CO along said xDSL telephone line (see figs.1-2).

As per claim 32, the modem Cheng does include said DSL modem comprises an upstream frequency band transmitter and a downstream frequency band receiver (see col.2, lines 16-17).

As per claim 33, Cheng and Olshansky in combination would include wherein said network modem exchanges data with said at least one other NDSL modem during time periods in which none of said NDSL modems is communicating with said CO so that jamming signal is transmitted continuously so as to prevent transmission from other Ethernet nodes, until the EA buffer 120 has sufficient space to receive additional data packets as taught by Olshansky (see col.5, lines 25-30).

As per claims 39-45 they are

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 34-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Cheng et al U.S. Patent No 6,456,650 B1.

As per claim 34, Cheng et al discloses a network DSL (NDSL) modem for communicating on an xDSL telephone line, the NDSL modem comprising: a DSL modem to (see figs. 1-2 element 30 and col.3, lines 34-37 and col.4, lines 7-67) communicate with a central office (CO) (see figs. 1 -2 element 40) of a communication system along ADSL, VDSL, HDSL is considered as the claimed said (xDSL line) (see col.3, lines 40-41) telephone line; and a network modem to communicate along an upstream frequency band of said xDSL line with at least one other NDSL modem connected in a subscriber premises to said xDSL telephone line . (see figs. 1-2 and col.2, lines 16-45 and col.3, lines 34-37 and col.4, lines 7-67)

As per claim 35, the modem of Cheng does include said network modem comprises an upstream frequency band transmitter and an upstream frequency band receiver and said DSL modem comprises and upstream frequency band transmitter and a downstream frequency band receiver (see col.2, lines 7-45 and col.4, lines 7-25).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al U.S. Patent No 6,456,650 B1 in view of Olshansky U.S. patent No 6,633,572 B1.

As per claim 36, Cheng et al discloses all the features of the claim invention except a control signal is at a frequency not used for communication between said NDSL modem and said central office modem.

Olshansky et al teaches transmit control signal (see fig.3 element 130) is at a frequency not used for communication between said NDSL modem and said central office modem packets (see col.4, lines 40-67 and col.5, lines 2-67).

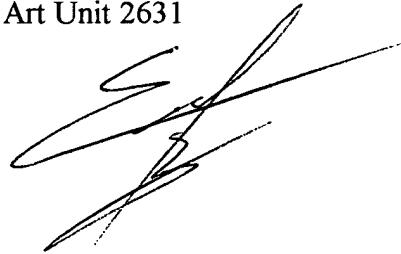
As per claim 37, the modem Cheng in combination with Olshansky would include said network modem performs time division multiplexing (TDM) and said DSL modem operates according to the xDSL protocol so as to prevent transmission from other Ethernet nodes, until the EA buffer 120 has sufficient space to receive additional data packets as taught by Olshansky (see col.5, lines 25-30).

As per claim 38, Cheng and Olshansky in combination would include wherein said network modem exchanges data with said at least one other NDSL modem during time periods in which none of said NDSL modems is communicating with said CO so that jamming signal is transmitted continuously so as to prevent transmission from other Ethernet nodes, until the EA

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Emmanuel Bayard  
Primary Examiner  
Art Unit 2631

Saturday, February 28, 2004

A handwritten signature in black ink, appearing to read "Emmanuel Bayard", is positioned above a stylized, slanted line drawing that looks like a signature or a stylized 'E'.